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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,127	11/07/2001	Richard McFarlane	723-1209	4638
27562 7590 07/08/2008 NIXON & VANDERHYE, P.C. 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
CASLER, TRACI				
ART UNIT		PAPER NUMBER		
3629				
MAIL DATE		DELIVERY MODE		
07/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/986,127

Applicant(s)

MCFARLANE ET AL.

Examiner

Traci L. Casler

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This action is in response to papers filed on April 8, 2008.

Claims 1-12 are pending.

Claims 1-12 are rejected.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,895,438 Ulrich; Telecommunication-Based Time-Management System and Method, in view of US Patent 6,446,119; Olah et al, System and Method for Monitoring Computer Usage.

4. As to claim 1 Ulrich teaches importing files with information on all activity passing through a centrally located firewall to a database(C. 4 I. 59-63) wherein the files are files of internet usage, email and phone logs(C. 5 I. 49-54)

5. importing current employees and company structure information to the database(C. 2 I. 35-40).
6. providing summary reports in response from a first employee(C. 2 I. 41-45 & C. **15 I. 5-10**), Ulrich fails to teach the reports containing all supervised employees, however, Olah teaches the employer requesting the reports to be run on one or all employees in an organization(C. 1 I 60-65). It would have been obvious to one of ordinary skill in the art to combine Olah with Ulrich as to allow production and performance monitoring of all employees with in a company to identify how time is being spent in turn how money is being spent by the company as a whole. As Ulrich sets forth in C. 15 I. 5-10, an individual can not only generate a report about themselves but about other employees in the company(not specifically those working under the employee), however, Olah teaches a supervisor monitoring their employees activities to ensure usage of resources and productivity. The examiner notes that the nature of the problem to be solved, identifying, monitoring employee performance and productivity would have led one of ordinary skill in the art to combine the individuals report of Ulrich with the supervisor report of Olah to yield predictable results
7. As to claim 2 Ulrich teaches highlighted summary reports(C. 7 I .7-10)
8. As to claim 3 and 6 Ulrich teaches links in reports that direct to more detailed information(C. 11 I. 25-30; L. 44-46)
9. As to claims 4 and 7-12 Ulrich teaches several options for report displays and options. Ulrich does not teach each specific report type or display being created,

however, it would have been obvious to one of ordinary skill in the art at the time to allow for any type of report deemed necessary by each individual organization.

Response to Arguments

10. Applicant's arguments filed April 8, 2008 have been fully considered but they are not persuasive.

11. Applicant argues that the combination of the reference fails to teach the limitation of the reports containing a summary of supervisor and employee computer usage. However, the applicant appears to be arguing the references separately rather than in combination.

12. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant argues that **nothing in Olah or Ulrich teaches or suggest that** when an individual requests their own report they would be shown reports of others. The applicant further argues that there is no reasoning why one skilled in the art would have been motivated to make the combination. The examiner notes as indicated in the rejection that the references are both indented to monitor internet usage which they are developed to solve similar problems which yield predictable results. The examiner further notes that the

combination is a simple combination of old elements and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable. Ulrich teaches organization personel, including top executives, generating their own report and Olah teaches the management generating reports on employees, therefore when the two references are combined they create reports that report on both the supervisor(executive) and the employees of the management.

13. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 3629

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Traci L Casler/
Art Unit 3629

Application/Control Number: 09/986,127

Page 7

Art Unit: 3629

/John G. Weiss/

Supervisory Patent Examiner, Art Unit 3629